

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

XINRONG ZHUANG,
Plaintiff,

v.

CIVIL ACTION NO.
09-12163-NMG

R. SAQUET,
CITY OF BROCKTON and
BROCKTON HOSPITAL,
Defendants.

**REPORT AND RECOMMENDATION RE:
DEFENDANTS' R. SAQUET AND CITY OF BROCKTON,
MOTION TO DISMISS FOR FAILURE TO COMPLY
WITH COURT ORDER/FAILURE TO PROSECUTE
(DOCKET ENTRY # 112)**

January 17, 2014

BOWLER, U.S.M.J.

Pending before this court is the above styled motion to dismiss filed by defendants R. Saquet and the City of Brockton ("defendants"). (Docket Entry # 112). Plaintiff Xinrong Zhuang ("plaintiff"), proceeding pro se, opposes the motion. (Docket Entry # 114).

Defendants seek to dismiss the action with prejudice because of plaintiff's failure to prosecute this action. Plaintiff has provided answers and responded to certain discovery albeit not always in a sufficient manner. He also represents that he did not receive notice of the November 21, 2013 hearing. (Docket Entry # 122). Plaintiff's conduct fails to rise to the level of misconduct sufficient to warrant the sanction of a dismissal with

prejudice. See Young v. Gordon, 330 F.3d 76, 81 (1st Cir. 2003) (dismissal ordinarily employed as sanction where "misconduct is extreme").

CONCLUSION

Accordingly, this court **RECOMMENDS**¹ that the motion to dismiss (Docket Entry # 112) be **DENIED**.

/s/ Marianne B. Bowler
MARIANNE B. BOWLER
United States Magistrate Judge

¹ Any objections to this Report and Recommendation must be filed with the Clerk of Court within 14 days of receipt of the Report and Recommendation to which objection is made and the basis for such objection. See Rule 72(b), Fed. R. Civ. P. Any party may respond to another party's objections within 14 days after service of the objections. Failure to file objections within the specified time waives the right to appeal the order.